

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM M. BYRD,
Plaintiff,

v.

AVENTIS PHARMACEUTICALS, INC.
and DEBRA EDMUNDS,
Defendants.

Civil Action No. 04-11032-DPW

DECLARATION OF LISA FERRARA

I, Lisa Ferrara, upon oath, depose and say as follows:

1. I am Vice President, Human Resources for Dictaphone Corporation's ("Dictaphone"). I have been employed by Dictaphone since November 1997 and have been in the Human Resources department since the beginning of my employment at Dictaphone. I became Vice President in April 2004. I work in Dictaphone's Stratford, CT office. Dictaphone also has offices in Massachusetts.

2. Dictaphone has been in business since 1923, did not go out of business in 1996 and has never gone out of business.

3. As Vice President of Human Resources, I am responsible for maintaining personnel files and records regarding employment performance for employees and former employees of Dictaphone, including those who work or worked for Dictaphone in Massachusetts. I am familiar with the documents that Dictaphone keeps regarding employees and employee performance in the normal course of business.

4. On or about October 13, 2004, I provided documents regarding Plaintiff William M. Byrd ("Plaintiff") (a former Dictaphone employee in Massachusetts) in response to a subpoena served on Dictaphone. The documents I provided on or about October 13, 2004 in

response to the subpoena are true and accurate copies of the documents contained in Plaintiff's Dictaphone personnel file.

5. On March 22, 2005, I located an additional file that contains documents relating to Plaintiff's performance at Dictaphone ("Performance File") that I had not previously provided to Defendants in response to the subpoena Dictaphone received in October 2004. When I located Plaintiff's Performance File, I provided true and accurate photocopies of documents from Plaintiff's Performance File to Defendants' counsel on March 22, 2005.

6. Attached hereto as Exhibit A is a true and accurate photocopy of a document entitled Overview: Corrective Action Process, which was the Dictaphone process for addressing employee performance problems prior to revision of the process in 1998.

7. Attached hereto as Exhibit B is a true and accurate photocopy of a document from Plaintiff's Performance File entitled Notes to File, bearing the dates October 6 and 9, 1995.

8. Attached hereto as Exhibit C is a true and accurate photocopy of a document from Plaintiff's Performance File, which is a memorandum from Barry Jones, Plaintiff's supervisor, to Plaintiff dated November 1, 1995 entitled "Work Plan for Success" and includes attachments 1 and 2 to that memorandum.

9. Attached hereto as Exhibit D is a true and accurate photocopy of a document from Plaintiff's Performance File, which is a memorandum to Plaintiff dated March 19, 1996, entitled "Performance Improvement Plan – Health Care Systems."

10. The Dictaphone Employee Change Authorization form is a document routinely maintained in employee personnel files at Dictaphone and is used by the Human Resources department to track changes in employee status and to ensure that such employee changes are authorized by appropriate individuals within Dictaphone. These forms are used as a method of record keeping and are also used as the basis for inputting data in Dictaphone's human resources

information systems. Therefore, it is critical that the information recorded on these forms be accurate.

11. For example, if an employee receives a promotion or goes out on a leave of absence from work, the form is completed and signed as “approved” by individuals in the employees chain of command. The form is then placed as a record in the employee’s personnel file. Similarly, when an employee terminates employment, an individual in the Human Resources Department completes the form, indicating the reason for the termination and the last day worked by the employee. The reason for the termination is inserted using a termination reason “code.” For purposes of this form, termination reason code “30” means that the individual was terminated involuntarily, because of performance issues.

12. Attached hereto as Exhibit E is a true and accurate photocopy of a Dictaphone document that contains the “key” to deciphering the meaning of the codes used on the Employee Change Authorization forms. This document states that Termination Code 30 means termination because of performance. I provided a true and accurate photocopy of this document to Defendants’ counsel on March 22, 2005.

13. Attached hereto as Exhibit F is a true and accurate photocopy of a Dictaphone Employee Change Authorization form regarding Plaintiff, which was included in the documents from Plaintiff’s personnel file, which were provided in response to Defendants’ subpoena on or about October 13, 2004.

14. In the termination section of this form, Termination-Reason Code 30 is filled out, indicating that Plaintiff was terminated from Dictaphone involuntarily, because of performance issues. The document is signed as approved by three individuals, including his immediate supervisor at the time, Robert Nardi. The form also indicates that Plaintiff’s termination was “preapproved by Human Resources,” which means that Human Resources also authorized that Plaintiff’s employment from Dictaphone be terminated.

Signed under the pains and penalties of perjury this 22nd day of March, 2005.



Lisa Ferrara

EXHIBIT A

**OVERVIEW:
CORRECTIVE
ACTION
PROCESS
(CAP)**

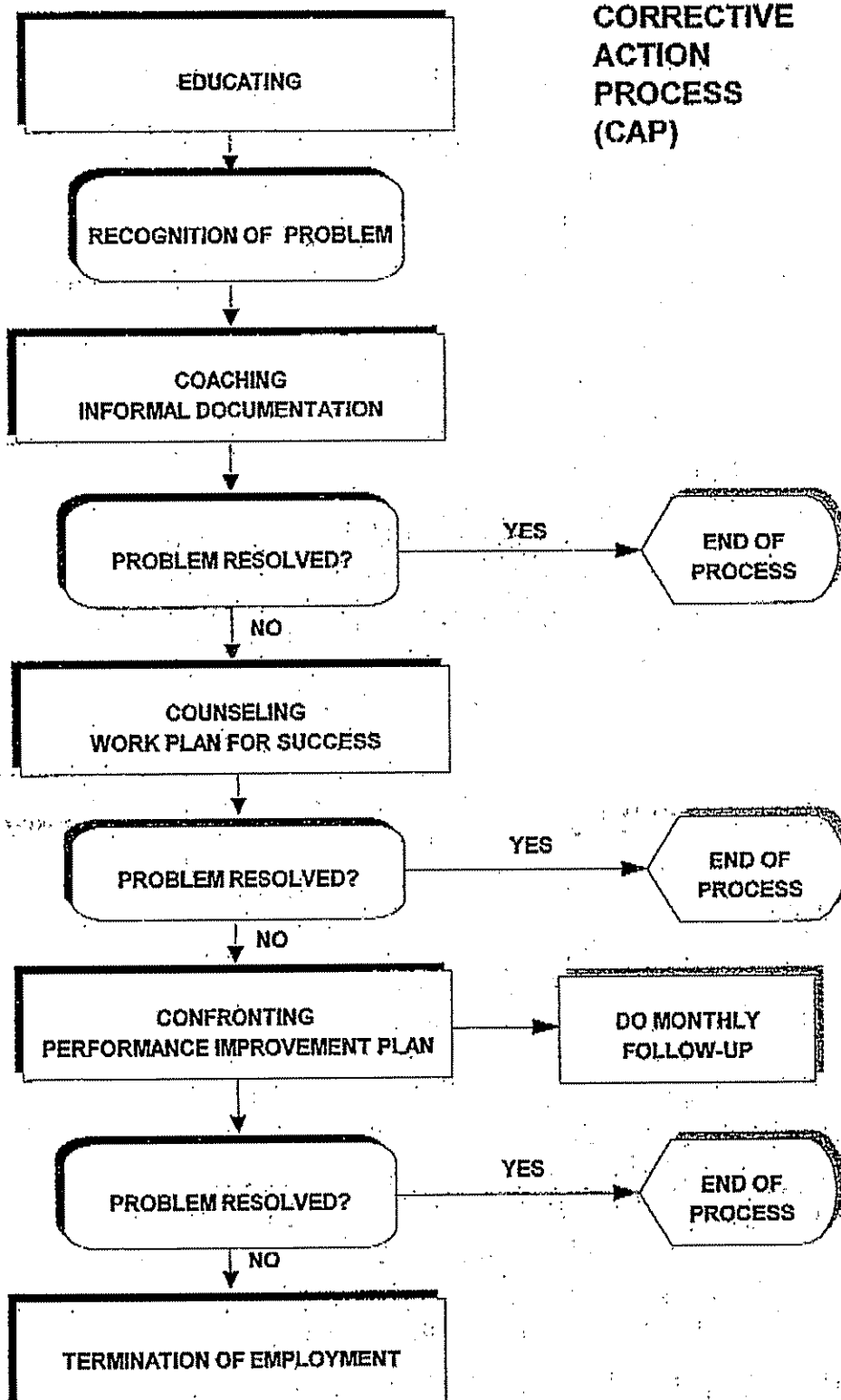


EXHIBIT B

Notes To File

Conversation With Barry Jones, Boston

Date: October 6, 1995

RE: Bill Byrd, Hospital Specialist

Barry indicated that he had a discussion with Bill Byrd regarding his lack of sales quota performance and Barry told Bill that he wanted him to consider taking a different specialist type job. Barry felt that he would be better suited for that position given his less than 50% quota performance for the year. Barry indicated that he would allow Bill the opportunity to think about it and if he decided that he did not want to start a different specialist job he would sit with the new Regional Health Care Manager and himself to devise a Work Plan For Success.

Conversation With Barry Jones

Date: October 9, 1995

Barry indicated that Bill Byrd told him on October 9th that he wanted to continue in his position as a Hospital Specialist and he felt he could succeed in the position and Barry said that was fine. They would sit down with the new Regional Health Care Manager to devise a work plan to allow Bill to be successful.

SKH

EXHIBIT C

Dictaphone

DATE: November 1, 1995

TO: Bill Byrd - Hospital Specialist

FROM: Barry Jones - Boston District Manager

SUBJECT: Work Plan for Success

When you were selected for a Hospital Specialist position in the Boston District, the selection was made because you displayed the potential and commitment to be an asset to this operation. During the time since that selection was made, you have put forth an effort to learn the Dictaphone product line and applications necessary to sell Dictaphone products and services. However, after reviewing your recent substandard performance, I am very concerned that you are not consistently making the effort to sharpen the skills you have learned to meet your monthly sales quota on a regular basis.

As the chart on Attachment #1 indicates, your performance (measured by orders taken) over the past six months is 52%, and for the past three months is 72%. This shows an upward trend which must continue. Year-to-date, you are at 40%. Your current assigned quota is set at \$35,000, and the minimum sales requirement for your position is \$28,000 per month.

In further analyzing your sales related activity, it is clear that several additional deficiencies exist. Attachment #2 indicates these deficiencies, as well as the action needed to be taken by you to improve them and the action management will take to assist you. Specifically, application knowledge, product knowledge and presentation skills must be improved in order for sales to improve. Additionally, you must successfully pass the CPR exam administered on November 30, 1995. Mastering these skills and knowledge will provide the solid foundation necessary for success as a Hospital Specialist.

This plan will be implemented for a period of 90 days (November 1, 1995 thru January 31, 1996) and will be closely monitored. As stated above, the minimum sales requirement for you is \$5,250 of commercial and \$28,000 of overall dollars per month. However, this plan is a rebuilding process and as such, we are setting minimum sales objectives which will allow you to gradually work up to the \$28,000 overall per month minimum requirement, and the \$5,250 minimum commercial requirement. We will expect you to achieve \$3,600 in commercial and \$17,500 overall in November; \$4,000 in commercial and \$22,000 overall in December; \$4,500 in commercial and \$27,000 overall in January. A minimum of \$4,500 commercial and \$28,000 per month overall will be expected during 1996.

Failure to achieve these minimum requirements or failure to comply with this Work Plan, including passing CPR Test, may result in further disciplinary action up to and including escalation of this document to a Performance Improvement Plan (PIP).

Dictaphone

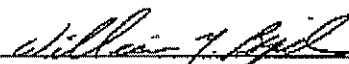
Your success with this plan will be monitored in our weekly FOCUS meetings. I fully expect that this will be a bilateral program where you make a genuine effort to involve me with your sales activities, concerns, problems, etc. Let's make a pro-active attempt to set your career on its correct course.

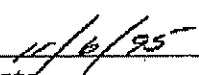
This Work Plan is a program to help you reverse an unacceptable situation. However, it is only a plan, and it will take your consistent commitment to make it work. I am confident this situation can be turned around and will continue to provide you with requested support throughout this plan.

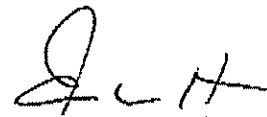
/klm


cc: Human Resources

I have carefully read the foregoing and understand its content.


Employee's Signature


Date


Human/Resource


Date

ATTACHMENT #1MONTHLY SALES PERFORMANCE

Overall Monthly Quota:	\$35,000	
Minimum Acceptable Commercial Quota:	\$5,250	15%
Minimum Acceptable Overall Quota:	\$28,000	80%

<u>Month</u>	<u>Dollar Volume Sold</u>	<u>% To Overall Quota</u>
May, 1995	\$3,373	10%
June, 1995	\$1,434	4%
July, 1995	\$30,060	86%
August, 1995	\$63,836	281%
September, 1995	\$3,910	11%
October, 1995	\$7,719	22%
SIX MONTH AVERAGE:	\$18,388	52%
THREE MONTH AVERAGE:	\$25,155	72%
YTD TOTAL:	\$139,330	40%

NAME: William Byrd

DATE: November 1, 1995

1. Performance Deficiencies	2. Behavior or Result Desired by Management	3. Action Management Will Take to Help Employee Correct Deficiencies	4. Action Employee Will Take to Correct Deficiencies
3 Month Avg. \$25,155, 72% 6 Month Avg. \$18,388, 52%	Bill must obtain a minimum sales level of as follows: Nov., 1995 - \$3,600 commercial and - \$17,500 overall Dec., 1995 - \$4,000 commercial and - \$22,000 overall Jan., 1995 - \$4,500 commercial and - \$27,00 overall consistently thereafter.	Manager will help plan effective activity.	Bill will effectively plan field activity utilizing all sources. Bill will have week planned by each Sunday prior to arriving to work on Monday a.m. and will be responsive to field coaching.
Product knowledge DX - RX - Integrations	Pass CPR Exam 11/30/95	Review material studied during Focus.	Study CPR Manual.
Presentation skills CPR	Competent CPR presentation.	Role Play CPR presentation.	Practice CPR presentation 1 hour weekly.
Demonstration of CPR DX - RX - Integration	Competent hands-on demo of DX - RX products.	Equipment set-up in Demo Room. Role Play.	Practice demo 45 minutes per day.

EXHIBIT D

Dictaphone Interoffice Memo

DATE: March 19, 1996

TO: Bill Byrd, Hospital Specialist

SUBJECT: **Performance Improvement Plan - Health Care Systems**

When you were selected for the Hospital Specialist Position, the selection was made because you displayed the potential and commitment to be successful in this position. During the time since the selection was made, you have put forth an effort to learn the Dictaphone product line and acquire the skills to sell Dictaphone products and services to the healthcare market. However, after reviewing your recent substandard performance and your handling of the University of Massachusetts Medical Center account, I am very concerned that you are not consistently applying the skills you have learned to meet our customers expectation and your assigned quota on a regular basis.

QUOTA REQUIREMENTS

Although a Work Plan for Success was initiated on November 1, 1995, your performance continues to lag well behind expectations. At this time, it is essential that you display consistent commitment to improve your performance. To help you improve I am providing this expanded plan which, with your commitment will help ensure that you are performing at an acceptable level. Your monthly performance (measured by orders taken) is as follows:

<u>Month</u>	<u>Quota</u>
Assigned Quota:	\$38,000
<u>Actual Results:</u>	
September	\$3,910
October	\$7,719
November	\$2,604
December	- \$ 420
January	- \$50,243
February	\$14,535
6 Month Average	- \$21,895
1996 YTD Average	- \$17854 -46%

As you are aware you are expected to meet or exceed your quota and the minimum monthly sales quota requirement for your position is 80% of assigned quota. To accurately measure your sales performance, your attainment of sales volume against quota will be based on what you personally sell from your territory and account responsibilities.

ACCOUNT MANAGEMENT:

Your handling of the University of Massachusetts Medical Center account was completely unacceptable. You had in your possession a complete proposal to deliver to the customer by 2:00 on March 1, 1996. At 10:30 am on March 1st, I called you in the Boston office and you indicated that you would deliver the proposal by 2:00 as required. On Monday, March 4th you left me a voice mail indicating that you missed the delivery deadline by 15 minutes and had no excuse. The magnitude of this deal and your inability to follow through to ensure that we would be included in the bid are completely irresponsible and will no longer be tolerated.

On a go forward basis, you must be responsible for ensuring that Dictaphone is included in all relevant bids by preparing complete proposals and delivering them in a timely manner. If you fail to respond to a customers request or prepare a proposal in a timely manner you will be subject to severe disciplinary action up to and including your immediate termination. You are in complete control of your actions and you must ensure that Dictaphone is present in all bid situations, nothing less will be acceptable.

In addition, I received a call from Emerson Hospital in Concord, MA indicating that they were in the process of purchasing a new dictation system and wanted Dictaphone to be included in the bid process. The customer indicated that you called on their account, but they were uncomfortable with your product knowledge and your professional demeanor towards them as a customer. As a result the customer requested that another sales representative be assigned the account. You need to ensure that you are providing the customer with complete product knowledge and that you are express your commitment to their complete and total satisfaction. 100% customer satisfaction is Dictaphone's goal and you need to ensure that you are fully accountable for your interactions with our customers, nothing less will be acceptable to them or to us.

ACTIVITY REQUIREMENTS:

In further analyzing your sales related activity, it is clear that several additional deficiencies exist. These deficiencies, as well as the action needed to be taken by you to improve them and the action I will take to assist you are as follows:

Effective Time Management:

Ineffective use of the complete selling day. You should leave the office for field appointments by 8:30 a.m. and not return to the office until after 4:30 p.m. You must use the available selling day to interface with customers as effectively as possible. Administrative tasks and completion of paperwork should not be conducted during the established selling day. If you need to work on a proposal in the office during the established selling day you must leave me a voice mail of your schedule change.

1 AVDS Trial Per Month:

Deficient and inconsistent installed trials. On average you have completed 0 AVDS trials per month against a target of 2. You need to target potential customers for AVDS trials on a daily basis. You must be ready to role play securing trials with me during your FOCUS meetings. I will review your targeted customer list each week and will provide you with feedback on your demonstration techniques.

20 Decision Maker Appointments Per Week:

Low and sporadic number of decision maker appointments each week. You should be targeting 4 appointments with decision makers each day. Each Monday, you must submit your Healthcare Specialist Form to me for review to ascertain if additional appointments are necessary. I will provide you with feedback during your FOCUS meeting, targeting potential appointments.

3 New Productive Hour Analysis Study Per Month:

Low number of time studies. On average you have completed 1 PHA per month against a target of 3. You need to improve this level of activity in order to ensure new business. You should use all necessary tools to focus on competitive and current customers. I will monitor your PHA studies during your FOCUS session.

1 Full CPR Demonstration Per Month:

You should target 1 medical record and radiology departments for CPR presentations daily. You should secure a minimum of 2 appointments with either the medical records or radiology departments each week and plan to have a minimum of 2 appointments on our planned field work day. I will monitor your appointment activity during your FOCUS session and evaluate your demonstration skills during our planned field day.

1 Planned Phone Power Session Per Week:

Inconsistent and undocumented phone power sessions. You should have a planned phone power list (20 account potentials) for review during your FOCUS meeting.

Complete Administrative Paperwork:

Incomplete required paperwork including the Focus Book, Weekly Schedule and Healthcare Specialist Forms as required. You must complete all required paperwork by the deadlines. I will monitor your activities during your FOCUS meeting.

QUOTA AND ACTIVITY GOALS

During this Performance Improvement Plan you will be required to attain the following goals:

<u>Month</u>	<u>Quota</u>	<u>Activity</u>
April 1996	60% \$22,800	All Required Activities as documented herein
May 1996	70% \$26,600	All Required Activities as documented herein
June 1996	80% \$30,400	All Required Activities as documented herein

Your performance in the areas of quota attainment, activity levels and customer responsiveness will be closely reviewed on a monthly basis. Your failure to meet any of the required quota levels and to consistently follow all of the activity requirements outlined in this document will result in further disciplinary action up to and including the termination of your employment prior to the completion of 90 days.

Your success with this plan will be monitored during FOCUS meetings to be held twice a month. I fully expect that this will be a bilateral program where you make a genuine effort to complete the daily and weekly activity requirements and involve me in your sales activities. This Performance Improvement Plan is a program to help you reverse an unacceptable situation, however, it is only a plan and it will take your consistent commitment to make it work. I am confident this situation can be turned around and will continue to provide you with requested support throughout the plan as appropriate. Please let me know what, if any, additional support you may need from me.

Sincerely,

Bob Nardi
District Manager

cc: Tony Procops, RVP
Sean Kolb-Hunt, Human Resources

I have carefully read this document and understand its content.

Employee Signature

Date

EXHIBIT E

DICTAPHONE MISCELLANEOUS CODES

09-06-96

PAGE 4

CODE TYPE * CODE DESCRIPTION.....

REG*1	NORTHERN
REG*2	EASTERN
REG*3	SOUTHERN
REG*4	CENTRAL
REG*5	WESTERN
REG*6	FEDERAL-GOVT
SMK*N	NON SMOKER
SMK*S	SMOKER
SRVREG*1	NORTHERN
SRVREG*3	SOUTHERN
SRVREG*4	CENTRAL
SRVREG*8	WESTERN
TER*00	UNKNOWN
TER*01	VOLUNTARY-OTHER
TER*02	VOLUNTARY
TER*03	ANOTHER JOB
TER*04	SALARY
TER*05	BENEFITS
TER*06	POLICIES
TER*07	WORK CONDITIONS
TER*08	PERSONAL
TER*09	RELOCATING
TER*10	CHILD CARE
TER*11	CONTINUE-EDUCATION
TER*12	MILITARY LEAVE
TER*13	MEDICAL
TER*14	PERSONAL LEAVE
TER*15	MUTUAL CONSENT
TER*16	TRANSFER TO PB
TER*17	TRANSFER FROM PB
TER*18	STRAITFORD RELO
TER*19	MEL CUST SRV RELO
TER*20	RETIRED
TER*21	RETIRED 1990 VSP
TER*24	TEMP CODE TRANS MFG
TER*25	DECEASED
TER*30	PERFORMANCE
TER*31	CONFLICT OF INTEREST
TER*32	ABSENTEEISM
TER*33	FALSIFICATION
TER*34	FIGHTING
TER*35	THEFT
TER*36	GROSS INSUBORDINATION
TER*37	INVOLUNTARY-OTHER
TER*38	TEMP ASSIGNMENT-COMPLETE
TER*39	LAID OFF
TER*40	FAILURE TO REPORT
TER*41	LONG TERM DISABILITY

213 records listed.

EXHIBIT F

Dictaphone**EMPLOYEE CHANGE AUTHORIZATION**

Hire Date <u>1/17/94</u>		Effective Date of Change (MM DD YY) <u>5/3/96</u>	
Employee Number <u>3134</u>	Employee Name (Last, First, Middle Initial) <u>Byrd, Bill</u>	Social Security Number <u>109-40-9915</u>	Prepared Date (MM DD YY) <u>5-1-96</u>

REASON FOR CHANGE (CHOOSE ONE BELOW)

JOB CHANGE <input type="checkbox"/> Merit <input type="checkbox"/> Transfer <input type="checkbox"/> Promotion <input type="checkbox"/> Quota <input type="checkbox"/> Draw <input type="checkbox"/> _____		LEAVE OF ABSENCE <input type="checkbox"/> Personal <input type="checkbox"/> Military <input type="checkbox"/> Family <input type="checkbox"/> Short-Term Disability <input type="checkbox"/> Worker's Compensation Last Day Worked _____ Start Leave Date _____		TERMINATION <input checked="" type="checkbox"/> Termination-Reason Code <u>30</u> Last Day Worked <u>5/3/96</u> <input type="checkbox"/> Layoff <input type="checkbox"/> Completion of Temp Assignment <input type="checkbox"/> Retirement <input type="checkbox"/> Normal <input type="checkbox"/> Deceased <input type="checkbox"/> Early	
Performance Rating _____		Expected Return Date _____		Sovereignty Days <u>-0-</u>	
Next Review Date _____		Actual Return Date _____		Inventory Release Signature <u>Bill returning 5/7/96 with rema</u> <input type="checkbox"/> Inventory Cleared <input checked="" type="checkbox"/> Inventory Not Cleared	

CHANGE INFORMATION (ALL CURRENT STATUS INFORMATION REQUIRED) units

CURRENT STATUS				CHANGE TO			
Location Number/Name <u>1037/Boston Hospital</u>		Cost Center/Department <u>1037/1000 Sales</u>		Location Number/Name		Cost Center/Department	
Salary <u>24,000</u>	<input type="checkbox"/> Hourly <input type="checkbox"/> Weekly <input type="checkbox"/> Yearly	Payroll ID <u>Bi-Monthly</u>		Salary	<input type="checkbox"/> Hourly <input type="checkbox"/> Weekly <input type="checkbox"/> Yearly	Payroll ID	
Salary Grade	Salary Range MIN MID MAX	Salary Grade	Salary Range MIN MID MAX	Salary Grade	Salary Range MIN MID MAX	Salary Grade	Salary Range MIN MID MAX
Scheduled Work Hours/Week <u>40</u>	FLSA <input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt	Scheduled Work Hours/Week	FLSA <input type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt	Scheduled Work Hours/Week	FLSA <input type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt	Scheduled Work Hours/Week	FLSA <input type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt
Pay Class <input type="checkbox"/> Part Time <input checked="" type="checkbox"/> Full Time	Pay Status <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Temporary	Pay Class <input type="checkbox"/> Part Time <input checked="" type="checkbox"/> Full Time	Pay Status <input type="checkbox"/> Regular <input type="checkbox"/> Temporary	Pay Class <input type="checkbox"/> Part Time <input checked="" type="checkbox"/> Full Time	Pay Status <input type="checkbox"/> Regular <input type="checkbox"/> Temporary	Pay Class <input type="checkbox"/> Part Time <input checked="" type="checkbox"/> Full Time	Pay Status <input type="checkbox"/> Regular <input type="checkbox"/> Temporary
Title <u>Health Care Specialist</u>	Job Code <u>69H</u>	Title	Job Code	Title	Job Code	Title	Job Code
EEO Code <u>4</u>	EEO Description <u>Sales Worker</u>	Employee Type Code <u>4437L</u>		EEO Code	EEO Description	Employee Type Code	
Previous Increase Date	Previous Increase Amount	Previous Increase %		Increase Date	Increase Amount	Increase %	
Reports To (Name) <u>Bob Nardi</u> Healthcare District Man. <u>4655</u>				Reports To (Name) _____			

SALES COMPENSATION (FIELD SALES ONLY)

Monthly Salary <u>2,000</u>	Monthly Draw <u>500.00</u>	Monthly Salary _____	Monthly Draw _____
Monthly Quota			
PERSONAL	GROUP	TOTAL	
Commercial <u>34,960</u>			Commercial _____
Systems <u>3,040</u>			Systems _____
APP <u>38,000</u>			APP _____
Total _____			Total _____

COMMENTS

Check for 3 days compensation and 7.5 vacation days already issued,
Termination was preapproved by Human Resources including Sean Kelley Hunt and Tony Procops

APPROVALS

Approved <u>[Signature]</u>	Date <u>5/3/96</u>	Approved <u>[Signature]</u>	Date <u>5/3/96</u>
Approved <u>[Signature]</u>	Date <u>5-3-96</u>	Approved <u>[Signature]</u>	Date <u>5-3-96</u>

Distribution: White - Human Resources; Green - Payroll; Canary - Personnel File; Pink - Supervisor/Manager; Goldenrod - Unemployment Compensation

B-161 Rev 6/95